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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,163	03/09/2007	Gunter Gomoll	2003P01974WOUS	4748

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BSH HOME APPLIANCES CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
100 BOSCH BOULEVARD  
NEW BERN, NC 28562

EXAMINER
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AYRES, TIMOTHY MICHAEL

ART UNIT	PAPER NUMBER
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3637

NOTIFICATION DATE	DELIVERY MODE
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02/24/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

### Office Action Summary

**Application No.**

10/584,163

**Applicant(s)**

GOMOLL ET AL.

**Examiner**

TIMOTHY M. AYRES

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 14, 15, 27, 28, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant admitted prior art figure 1. As seen in figure 1 of this application a body (6) and door (7) of a refrigerator are installed in a niche (1). As seen in the figure when the door (7) is open it projects beyond a front edge (3) of the niche.

3. Claims 14-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Finding the right refrigerator by Roe Osborn from fine homebuilding magazine. Osborn teaches different embodiments of refrigerators installed in a niche. As seen in the refrigerator on page 99, the body of the refrigerator is flush with the niche and the door projects beyond the edge. As also seen in the picture on page 99, the door of the refrigerator has a receiving area that extends inside the body of the refrigerator and into a cavity on the door. Regarding claims 15, Osborn teaches a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche such as seen on page 100 and 101.

4. Claims 14-33 rejected under 35 U.S.C. 102(b) as being anticipated by Hide That Ugly Refrigerator by Rex Alexander from fine homebuilding magazine. Alexander teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche.

5. Claims 14, 15, and 17-33 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,079,216 to de Marsillac Plunkett. De Marsillac teaches a refrigerator unit installed in a niche as seen in figure 1, 2, and 4. The refrigerator comprises a body (1) and thermally insulated door (4,5). The niche (21) is the recess in the wall (20), it should also be noted that the niche is not considered to be positively claimed and is considered just a reference point to define structure of the refrigerator. Regarding claim 15, Also with no structure of niche there is no reference point to define a front of the niche or refrigerator.

6. Claims 14-33 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,790,146 to Mun. Mun teaches a refrigerator capable of being installed in a niche. The refrigerator comprises a body and thermally insulated door. While no niche is specified in most kitchens the refrigerator is designed to fit in a niche, even if there is room between the body and the niche, but this is irrelevant since the claims do not

positively require the niche and the refrigerator of Mun is very capable of being positioned in the positions required by the claim without any modification to the refrigerator.

7. Claims 14-33 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,358,326 to Cherry. Cherry teaches a refrigerator in stalled in a niche. The refrigerator comprises a body and thermally insulated door. The examiner is interpreting the front of the refrigerator to mean the front of the body (Col. 1, lines 15-20) since it known in the art (as reinforced by page 101 in the finding the right refrigerator article) that the doors and handles of counter depth refrigerator stick out beyond the cabinet front since the body of a counter depth refrigerator is designed to be 24 in and cabinets are also designed to be 24 inches with minor variations in design and manufacturing. Regarding claims 15 and 16, Cherry to teach a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche.

### ***Response to Arguments***

8. Applicant's arguments filed 12/08/09 have been fully considered but they are not persuasive. In regards to the arguments about the 112 rejections, regarding claim 16, the examiner did not realize that the compartment includes both the interior of the body and the interior of the door and therefore that rejections is now withdrawn. Regarding claim 21, the examiner did not realize that an end state was the side edge of the door

and therefore the rejections has been withdrawn, although it should be noted that end state is a confusing term and sounds more like a position. A side, edge, end, or more structural definition of the door would be better and is recommended for this element. Regarding arguments towards the references, the examiner interprets the current claims as to not positively recite the niche and therefore the claims are directed just to a refrigerator. It is suggested that the applicant claim the combination of the niche and refrigerator. If such combination is claimed, it also suggested that more structure of the niche and its relationship to refrigerator be recited in the claims. With respect to the Westfalia, Kleeeh, and Kallus rejections, while probably still valid in light of the claims only requiring a refrigerator and not a niche, there are better references and rejections available and therefore they have been withdrawn. In regards to the Marsillac Plunkett arguments, it should be noted that the rejection is with a different embodiment then the one argued and as seen in the expanded rejection above. In regards to the arguments towards Mun and Cherry, while the description implies a niche, neither references actually specifies one, but the refrigerators are considered to meet the claims as recited (since no niche is required). Please note the fine home building articles and the new rejections above. Due to the new rejections, incorrect interpretations, and lack of explanation of the niche interpretation in the last action, this action is being made non-final.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY M. AYRES whose telephone number is (571)272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./  
Examiner, Art Unit 3637  
2/16/2010

/Janet M. Wilkens/  
Primary Examiner, Art Unit 3637